



NEW MEXICO JUDICIAL BRANCH

GENERAL PERSONNEL POLICY AND PROCEDURE

Reference NMJBPR Part 1, Section 1.05 & NMJBPR Part 2, Section 15.05

Inquiries: AOC HR (505) 827-4937 or 827-4810

Dev.: 1/1997; Rev: 8/21/06; 3/01/12

HARASSMENT (INCLUDING SEXUAL HARASSMENT)

DISCRIMINATION AND RETALIATION POLICY

1. PURPOSE

The purpose of this policy is to protect all employees and at-will employees (referred to in this policy as “employees” from harassment (including sexual harassment), discrimination, and retaliation and to establish procedures employees must follow if aware of or subject to harassment, discrimination or retaliation.

The New Mexico Judicial Branch is committed to creating and maintaining a work environment in which employees can work together in an atmosphere that enhances productivity, recognizes employee diversity and is free from all forms of harassment, discrimination and retaliation. Harassment and/or discrimination because of race, religion, sex, age, national origin, ancestry, disability or medical condition, sexual orientation, socioeconomic status or political affiliation, as well as retaliation against employees who file a complaint, is illegal and will not be tolerated by the New Mexico Judicial Branch.

Harassment and/or disparate treatment that results in a hostile work environment will not be tolerated.

This policy has a broad application and applies to justices, judges, all employees (probationary, term, classified, at-will and temporary employees), in addition to outside parties.

Any employee who violates this policy will be subject to discipline up to and including termination. Any justice or judge who violates this policy shall be subject to referral to the Judicial Standards Commission, and discipline by the Supreme Court, as appropriate.

2. DEFINITIONS

- A. **AOC HRD** – Administrative Office of the New Mexico Courts Human Resources Division.
- B. **AOC HRD Director** - Director of the AOC HRD, or designee.
- C. **Administrative Authority** – Individual or designee with the primary responsibility to supervise and coordinate the administration of a Judicial Entity, or as designated by the Chief Judge and approved by the Supreme Court Order. (Ref: Administrative Authority, Appointing Authority and At-Will Employee List Policy.) (Added 3/01/12)
- D. **At - Will Employee** – A person in the Judicial Branch who is FLSA non-covered, on the New Mexico Judicial Branch Job Classification and Pay Schedule, excluding a justice or judge. (Ref: Administrative Authority, Appointing Authority and At-Will Employee List.) (Added 3/01/12)
- E. **Business Day** - 8:00 a.m. to 5:00 p.m. local time. Monday through Friday, except holidays.
- F. **Director** - The Director of the Administrative Office of the Courts or designee.
- G. **Discrimination** - When an employee is treated differently or not considered in the recruitment, hiring and promotion process, and other terms and conditions of employment because of race, color, religion, sex, age, national origin, ancestry, physical or mental handicap, serious medical condition, sexual orientation, gender identity, socioeconomic status or political affiliation.
- H. **Disparate Treatment** – When an employee is treated differently from others. The different treatment is based on one or more of the protected factors and the different treatment is intentional. For example, disparate treatment occurs when a supervisor allows the majority of his/her employees to enjoy a particular job benefit but denies a single employee that same benefit. (Added 3/01/12)
- I. **Employee** – A person who holds a permanent or term position within the Judicial Branch, excluding a justice, judge or at-will employee.
- J. **FLSA Non-Exempt** – An employee who is covered by FLSA overtime provisions and is paid or compensated at time and one-half for actual hours worked in excess of 40 hours in a designated work week.

- K. Harassment** - The act of making repeated attacks, as in badgering, tormenting, bothering, hounding, persecuting, hassling, pestering, joking, gesturing, commenting or conversing which is seriously offensive in nature. Harassment includes creating a hostile work environment by creating a workplace situation where an employee cannot reasonably perform work due to behaviors by management, employees, justices or judges that are clearly contrary to appropriate management or professional behavior. (Changed 3/01/12)
- L. Hostile Work Environment** – A term used to describe a workplace situation where an employee cannot reasonably perform his/her work, due to certain behaviors by management or co-workers. Hostility in this form is not only another being rude, yelling, or annoying. It is very specific behavior that causes severe undue work stress to the employee, and inhibits work performance. The conduct or behavior must be pervasive and constitute a pattern rather than consist of one or two isolated incidents. (Added 3/01/12)
- M. Judicial Entity** – Any court or administrative group within the Judicial Branch. (Added 3/01/12)
- N. Local Investigation** – One which is conducted within the judicial entity in which the complaint was submitted by the local investigator. (Added 3/01/12)
- O. Local Investigator** – The individual who is trained in the adopted investigation methodology to investigate complaints of harassment, discrimination and retaliation; and has the responsibility to review complaint documentation, conduct confidential interviews, prepare witness statements, evaluate facts, documents and statements, prepare a formal written report summarizing the findings of fact and make recommendations for approval by the Administrative Authority. Local investigators may be selected from those holding only the following job classifications: AOC Deputy Director, AOC HR Director, AOC HR Project Manager, AOC HR Administrator, AOC General Counsel, Magistrate Court Division Director, Attorney Supervisor, Attorney Senior, Attorney Associate, Attorney- General Counsel, Chief Appellate Court Clerk, Court Executive Officer 1, 2 or 3, Deputy Court Executive Officer 1 or 2, HR Administrator Senior, HR Director, HR Manager, or Judicial Standards Commission Investigator. (Added 3/01/12)
- P. Lost Compensation** - Compensation accrued, gained or accumulated indicating a right to such compensation.

- Q. Mediation** - An attempt to bring about a peaceful settlement or compromise between disputants through the objective intervention of a neutral party.
- R. NMJBPR** – New Mexico Judicial Branch Personnel Rules – Part 1 for employees.
- S. NMJBPAWE** – New Mexico Judicial Branch Personnel Rules – Part II for at-will employees.
- T. Outside Party** - An individual who is not a justice, judge or employee or at-will employee of any judicial entity.
- U. Referred Investigation** – One which is submitted to the AOC HR Director by the Administrative Authority of the judicial entity from which the complaint originated, after a local investigation is completed.
- V. Retaliation** - The act of attacking in return, as in taking revenge, reciprocating, settling a score or getting even.
- W. Sexual Harassment** - Behavior of a sexual nature that is unwelcome and personally offensive to its recipient; requests for sexual favors; other verbal or physical conduct of a sexual nature that are unwelcome. Such behavior may come from Judicial Branch employees as well as from outside parties. Examples of sexual harassment which shall not be tolerated include but are not limited to: suggestive or obscene e-mails, letters, notes, invitations; derogatory comments, epithets, lewd language, slurs or jokes; impeding or blocking movements; touching or any physical interference with normal work; sexually oriented gestures; the display of sexually suggestive or derogatory objects, pictures, cartoons, or posters; threats or insinuations that lack of sexual favors will result in reprisals; withholding support for reappointment, promotions or transfers, change of assignments.
- X. Witness** - Any individual who has direct or indirect knowledge of the incident(s) relevant to an investigation.

3. CONFIDENTIALITY

All individuals involved in any capacity shall maintain confidentiality throughout the investigation process.

4. EMPLOYEE PROVISIONS

- A.** Each manager and supervisor shall establish and maintain a work environment that is free of harassment, discrimination and retaliation from justices, judges, employees and outside parties.
- B.** Each employee of the Judicial Branch is expected to abide by this policy and shall avoid any behavior or conduct toward any justice, judge, employee or outside party that could be interpreted as harassment, discrimination or retaliation.
- C.** An employee who observes or becomes aware of any possible harassment, discrimination or retaliation shall immediately report it.
- D.** An employee shall not be subject to retaliation for making a complaint under this policy.
- E.** An employee who violates this policy shall be subject to discipline up to and including termination in accordance with the provisions of the NMJBPR & NMJBPAWE.

5. JUSTICE AND JUDGE PROVISIONS

- A.** Each justice and judge shall establish and maintain a work environment that is free of harassment, discrimination and retaliation from justices, judges, employees and outside parties.
- B.** A justice or judge of the Judicial Branch is expected to abide by this policy and shall avoid any behavior or conduct toward any justice, judge, employee or outside party that could be interpreted as harassment, discrimination or retaliation.
- C.** A justice or judge who observes or becomes aware of any possible harassment, discrimination or retaliation shall immediately report it.
- D.** Any justice or judge who violates this policy shall be subject to referral to the Judicial Standards Commission, and disciplined by the Supreme Court, as appropriate.
- E.** If a complaint against a justice or judge is referred to the Judicial Standards Commission, the provisions of NMSA 1978 §34-10-2.1 shall apply.

6. EMPLOYEE EDUCATIONAL PROGRAMS

- A.** Each judicial entity shall ensure every employee attends an AOC-approved Harassment, Discrimination and Retaliation Training course within six (6) months of hire.
- B.** Judicial Entity Certification - The Administrative Authority or designee shall certify to the Director by the first of January each year in a letter or e-mail that all current employees of that judicial entity have previously received training or will receive the above training within the next six (6) months. AOC HRD will maintain a record of certification communications received from judicial entities
- C.** Follow-up Harassment Discrimination and Retaliation Training may be provided, as appropriate.
- D.** Each employee who attends Harassment, Discrimination and Retaliation Training shall sign a verification acknowledging that the employee has attended the training. A copy of the individual employee's acknowledgement of training must be included in his/her employee personnel file.
- E.** The Harassment, Discrimination and Retaliation Training shall include:
 - (1)** an overview of the NMJBPR and NMJBPRWE Section 1.05;
 - (2)** what constitutes harassment, discrimination and retaliation;
 - (3)** examples of harassment, discrimination and retaliation;
 - (4)** examples of how to handle a harassing, discriminatory or retaliatory situation;
 - (5)** steps to take for resolution if an employee feels harassment, discrimination or retaliation has occurred.

7. LOCAL INVESTIGATOR DESIGNATION (Section Added 3/01/12)

- A.** A local investigator shall not be the Administrative Authority.
- B.** The local investigator upon completion of training shall be appointed by the Administrative Authority.
- C.** Each appointed local investigator must attend an AOC approved investigation training prior to investigating any harassment, discrimination or retaliation complaint.
- D.** Staff designated as the local investigator shall not receive additional compensation.
- E.** The local investigator may refer associated parties to mediation in accordance with section 15 below.

8. LOCAL INVESTIGATOR TRAINING

- A.** The AOC shall make the mandatory training for designated local investigators available at least two times in a calendar year.
- B.** The AOC sponsored training will provide local investigators with information regarding how to conduct local investigations based upon this policy.
- C.** In addition to the AOC sponsored training, local investigators are encouraged to attend additional relevant training.

9. HOW TO REPORT HARASSMENT, DISCRIMINATION AND RETALIATION

- A.** Justice, judge, at-will employee, or an employee should submit a clear, concise and relevant written complaint within a reasonable time not to exceed 90 calendar days from the most recent alleged related incident.
- B.** An individual may use the "Harassment (Including Sexual), Discrimination and Retaliation Notice Form" to make a written complaint.
- C.** A complaint against a justice, judge, Court Executive Officer, Chief Appellate Court Clerk, or AOC Director shall be submitted to the AOC HR Director.
- D.** A complaint against an employee or outside person shall be submitted as follows:

- (1) In the Supreme Court or the Court of Appeals to the Chief Appellate Court Clerk of that judicial entity.
 - (2) In a District Court or the Metropolitan Court to the Court Executive Officer of the judicial entity.
 - (3) In Magistrate Court or the AOC to the Director of the AOC.
- E. Whether or not the accused individual is confronted directly about the individual's behavior, the complaining individual shall immediately report the behavior. An individual who believes that he or she has been a victim of harassment, discrimination or retaliation is encouraged to inform the accused individual that the behavior is offensive and that it should stop immediately.
- F. Any employee knowingly making false statements in a complaint or during an investigation of harassment, discrimination or retaliation shall be subject to discipline, pursuant to the NMJBPR.

10. OUTSIDE-PARTY HARASSMENT

- A. Upon receipt of harassment, discrimination or retaliation complaint against an outside party, the investigator shall initiate an investigation by interviewing the complainant and complainant's witnesses in the manner stated above. If appropriate, interviews will be held with the respondent and the respondent's witnesses in the manner stated above.
- B. In reviewing and responding to such a case, the investigator shall consider the extent of Judicial Branch control and any other legal responsibility the Judicial Branch has with respect to the conduct of outside parties, and recommended action to the Administrative Authority or appropriate administrative party.

11. INVESTIGATION PROCEDURES (Local Investigator or Director) (Section Added 3/01/12)

- A. Upon receipt of a harassment, discrimination or retaliation complaint, the investigator shall make an initial determination within 10 business days whether the complaint states facts that fairly describe improper harassment, discrimination or retaliation as defined in this policy. The complaint should be read broadly, and should not be held to technical pleading standards. If the investigator determines that the complaint does not allege improper harassment, discrimination or retaliation, the investigator shall so notify the complainant in writing.
- B. Nothing in this section shall prevent the investigator from addressing the allegations with the Administrative Authority if the complaint states facts

related to mismanagement or misconduct that is not improper harassment, discrimination or retaliation.

- C. If the investigator's initial determination is that the complaint does state a cause of improper harassment, discrimination or retaliation the investigator will provide the accused individual with a copy of the full complaint within 10 business days, unless the complainant rescinds the complaint.
- D. The accused individual may submit a clear, concise and relevant written response within 10 business days of receipt of the complaint against him or her. Any response will be provided by the investigator to the complainant within five (5) business days of receipt of the complaint.
- E. The investigator shall initiate a confidential investigation within 20 business days after providing the complaint to the accused.
- F. All interviews and discussions with parties associated with the complaint and witnesses shall be conducted in private.
- G. The investigator shall inform each interviewee in writing to keep the matter confidential.
- H. If the complainant, respondent or a witness is unwilling to be interviewed, to sign the formal complaint statement, to timely sign a witness statement or to otherwise participate or cooperate in the investigative process, the investigator shall prepare and sign a written statement attesting to the refusal of the complainant, respondent or witness to cooperate in the investigation. An investigation of the allegation shall nevertheless be conducted in a manner appropriate to the circumstances.

Written & Signed Statements - All interviews of the complainant, respondent and witnesses shall be documented by the investigator in statement form, signed by the individual interviewed and will become part of the evidence of the investigation. Any refusal to sign will be noted by the investigator.

(1) Interview of the Complainant

The allegation shall be discussed in detail to determine:

- a. identity of the accused individual (hereafter, the "respondent");
- b. the specific details of each event the complainant believes is inappropriate, including date(s), time(s), location(s), act(s), gesture(s) and dialogue;

- c. whether there are any documents to support the allegations of the complainant;
- d. to the extent possible, any economic and/or psychological consequences to the complainant;
- e. the nature and past history of the relationship between the complainant and respondent and the relationship of the respondent to the organization (i.e., supervisory employee, non-supervisory employee, third party, elected official);
- f. any statement(s), act(s) or gesture(s) the complainant has made to let the respondent know the behavior is unwelcome. If the complainant initially welcomed the conduct by active participation, the complainant should have given specific notice to the respondent that the conduct was no longer welcome for any such subsequent conduct to be deemed unwelcome;
- g. whether the complainant knows of others who may have been party to the alleged behavior by the respondent;
- h. the names of any witnesses to the alleged behavior;
- i. whether management could have become or was aware of the incident(s) that are the subject of the complaint; and
- j. whether the complainant has made a previous complaint concerning the alleged behavior and to whom such complaint was made.

(2) Interview of the Respondent

The respondent should receive an explanation and be afforded the opportunity to discuss the allegation(s) in detail. The investigator must:

- a. inform the respondent of the nature of the inquiry;
- b. request that the respondent reply to each of the allegations made;
- c. ask for the name(s) of witnesses, if any, who are actual witnesses to the alleged behavior and can confirm the respondent's statement;
- d. obtain copies of any relevant documentation supporting the respondent's statement;
- e. ask if the respondent has previously had any kind of conflict with the complainant;
- f. determine the nature and past history of the relationship between the complainant and the respondent. Assess if the complainant initially welcomed the conduct by active participation and if the complainant gave specific notice to the respondent that the conduct was no longer welcome; and

- B. The Administrative Authority of the judicial entity in which the complaint was submitted and investigated by a local investigator makes the final decision regarding any actions to be taken, and:
 - (1) informs the complainant and respondent of the results of the investigation in writing, and;
 - (2) informs the complainant's and respondent's supervisor(s) of the results of the investigation and of any action(s) recommended.
- C. A confidential file containing all documentation shall be maintained by the judicial entity in the case of a local investigation or the AOC HRD in the case of a referred investigation.

13. REFERRED INVESTIGATION (If referred to AOC HRD.) (Section Added 3/01/12)

- A. If upon review of the local investigation findings the Administrative Authority determines based upon the facts, documents, witness statements and local investigator's report that the investigation rises to the level of complexity that a referral to the AOC HRD for investigation is required, the Administrative Authority shall forward the complaint and all supporting documents to the AOC HR Director within 30 business days.
- B. Local Investigator's Summary Report - The local investigators report shall summarize the evidence gathered and the reason why AOC HRD assistance is required.
- C. The local investigation will terminate at the point it is referred to the AOC HRD, unless the AOC Director determines that the investigation does not rise to the level of complexity requiring an AOC HRD investigation, Should this occur the investigation must be completed by the judicial entity in which the complaint arose by a local investigator.
- D. The AOC HR Director may refer associated parties to mediation in accordance with section 15 below.
- E. Any recommendations made by the AOC HR Director or designee shall be reviewed by the AOC Director. All AOC Director approved actions including discipline up to and including employee termination shall be adopted and implemented by the Judicial Entity within 45 calendar days.

14. GRIEVANCE RIGHTS

- A. **At-Will Employee**

An at-will employee who is disciplined under this policy has no grievance rights under NMJBPR Part 2.

B. An Employee Who Has Completed Probationary Period

An employee who has completed the probationary period who is suspended, demoted, terminated or suffers a loss of accrued compensation under this policy may file a grievance in accordance with the NMJBPR Part 1.

15. MEDIATION (Section Added 3/01/12)

Mediation is the process through which a complainant and respondent work under the direction of a mediator to solve their problems. Ideally, the complainant and respondent will walk out of mediation feeling as if they have reached a win-win outcome. A solid agreement is the intended outcome of any mediation, and all of the parties involved will put in a considerable amount of time and effort to reach this agreement.

- A.** Mediation is voluntary and all parties there must state their good faith intention to complete their mediation by an agreement. Each party to mediation will sign a form stating that they have agreed to mediate.
- B.** Any party may withdraw from or suspend the mediation process at any time, for any reason or no reason. The mediator may suspend or terminate the mediation, if the mediator feels that the mediation will lead to an unreasonable result, if the mediator feels that an impasse has been reached, or if the mediator determines that he/she can no longer effectively perform his/her facilitative role. Should either of the aforementioned occur parties must inform the investigator within two (2) business days.
- C.** It is understood between the parties and the mediator that the mediation will be strictly confidential. Mediation discussions, any draft resolutions and any unsigned mediated Agreements shall not be admissible in any court, administrative or other contested proceeding. Any signed mediation agreements are binding on the parties and will be kept in the employee's personnel file. Failure to comply with the mediation agreement could result in disciplinary action.
- D.** The judicial entity in which the complaint arose is responsible for any fees associated with a selected mediator.
- E.** All mediation referrals and agreements must be documented by the investigator. Such documentation shall include the names of all associated parties, and the names of all associated parties, the specific date mediation

is to take place and the anticipated date of completion. The investigator shall coordinate times and places with the selected mediator.

- F. The Office of Alternative Dispute Prevention and Resolution, Risk Management Division, General Services Department of the State of New Mexico offers alternative dispute resolution services. The office coordinates a range of services including a network of skilled mediators to respond to requests for direct assistance. Please call 827-0444, 827-0421 or 827-0576 for further information.

Approved by Supreme Court Order #: 06-8500, August 18, 2006

Effective Date: March 1, 2012



Arthur W. Pepin, Director
Administrative Office of the Courts



Date

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**HARASSMENT (INCLUDING SEXUAL),
DISCRIMINATION AND RETALIATION
COMPLAINT FORM**

Reference: Harassment (Including Sexual) Discrimination & Retaliation Policy
NMJBPR Part 1, Section 1.05 & NMJBPR Part 2, Section 15.05

Confidentiality shall be maintained throughout the investigative process. Upon receipt of a harassment, discrimination or retaliation complaint the investigator will provide the accused individual with a copy of the full complaint within ten (10) business days, unless the complainant resends their complaint. Please reference the above mentioned, and review the definitions in the policy.

Name: _____ Date: _____

Judicial Entity: _____ Telephone Number: _____

Please answer the following questions with as much information as possible.

Name the accused individual(s):

State the date, time and location the event occurred:

Give the specific details of each event that leads you to believe that you have been harassed, discriminated or retaliated against or that you have observed harassment or discrimination (Ref: Harassment definition.):

Describe the act(s), gesture(s) and dialogue that occurred:

Were there any witnesses to the event? If so, name them:

What is the nature and past history of your relationship to the accused individual (employee/supervisor)?

Why do you think the harassment, discrimination or retaliation is occurring?

Do you have documents to support your allegations? If so, please attach copies.

Describe any statements, act(s) or gesture(s) you made to let the accused individual know the behavior is unwelcome:

Have there been any economic and/or psychological consequences to you? If so, state what they are:

Do you know of others who may have suffered harassment, discrimination or retaliation by the accused? If so, name the individuals and describe the alleged conduct:

Could management be aware of the event about which you are complaining? If so, how?

Have you complained previously of the alleged behavior? If so, to whom and when?

Provide any other details or information that you feel might be pertinent:

I attest that the information provided above is true and accurate to the best of my knowledge.

Signature of complainant _____

Received by: _____ Date: _____

*Any employee knowingly making false statements in a complaint
or during an investigation of harassment, discrimination or retaliation shall be subject to
discipline, pursuant to NMJBPR.*